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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,189	11/26/2003	Gopal B. Avinash	136854GS/YOD GEMS:0259	9027
68174	7590	10/30/2007	EXAMINER	
GE HEALTHCARE c/o FLETCHER YODER, PC P.O. BOX 692289 HOUSTON, TX 77269-2289			MOTSINGER, SEAN T	
			ART UNIT	PAPER NUMBER
			2624	
			MAIL DATE	DELIVERY MODE
			10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/723,189

Applicant(s)

AVINASH, GOPAL B.

Examiner

Sean Motsinger

Art Unit

2624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; ~~as set forth in (b)~~ above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).
13. ☐ Other: _____.


JINGGE WU
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the 35 U.S.C. 101 rejection, first applicant is correct in his and that claims 26-27 should not have such a rejection these claims were cited under 35 U.S.C. 101 because of a typo and the rejection does not apply to these claims. Note the rejection made no reference to these claims except in the heading. However with regard to claims 28-29, applicant is incorrect in his assertion that the claims are patentable because they are stored on a computer readable medium. As stated in the previous action 'Claims 28 and 29 claim an image which is merely data and therefore has no functional relationship. See MPEP section 2106 [R-5], VI, B, "For example, a claim reciting only a musical composition, literary work, compilation of data, or legal document (e.g., an insurance policy) per se does not appear to be a process, machine, manufacture, or composition of matter." ' Applicant should further note that non-functional descriptive material (i.e. data) cannot be made statutory via storing it on a computer readable medium "When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory and should be rejected under 35 U.S.C. 101." See MPEP section 2106.01 [R-5]. Applicant should read the entirety of MPEP section 2106.01 [R-5] for a more complete explanation of why data stored on a computer-readable medium cannot be found statutory.

With regard to applicant's argument to Independent claims 1, 24, and 26. These arguments first revolve around the fact that a group of pixels exhibiting moderate characteristics does not exhibit both low contrast and high contrast, however, when the claim is read in light of applicant's specification this argument is specious at best. Clearly the applicant does the exact same thing as in Fan (see page 9 paragraph 15-32 in applicant's specification). Applicant calculates local gradient and uses 2 thresholds to map the data into pixels of low gradient, moderate gradient, and high gradient. If the examiner were to accept applicant's arguments the examiner would be forced to make a rejection under 35 U.S.C. 112 first paragraph and second paragraph because the claim would not be supported by the specification. Applicant further asserts that these areas are corresponding to structure, potentially structure and non-structure however areas of low contrast moderate contrast and high contrast have the same properties. (Note gradient would be recognized in the art to be a measure of local contrast.)

Applicant further asserts that the same operation is performed on all pixels and therefore there is not first and second operation. This argument cannot be found persuasive for several reasons. First the claim does not dictate that the first and second operation be different as claimed the first and second operation could be the same. Second the first and second operation of Fan is not the same the first operation is a low pass filter the second is a high pass filter, furthermore the claims dictate for example "at least a second operation" this clearly does not prohibit processing the groups by both operations.

Finally even if the claim did demand that only the second operation be performed on the second group and only the first operation be performed on the first group, this is the case in view of the condition below paragraph 22. Perhaps condition this makes the thresholding also described in paragraph 26 more clear note threshold A and B are used to assign the parameter alpha in way unique to each group (high low and moderate) of pixels this parameter insures that only one type of processing is done for low and high contrast pixels. Note alpha is assigned to 1 in areas of low contrast and 0 in areas of high contrast. Therefore when alpha is used in equation 1 the final image has the first group processed by only by first operation.

The same argument immediately above is also provided for claims 11, 20 25, and 27 and therefore this argument is likewise unpersuasive.

With regard to applicant's complaints to the rejection of the claims 24 and 25 reciting means plus function language. The examiner is well aware that a means plus function claim refers back to the structure in the specification however the examiner is required to give the claim its broadest reasonable interpretation. The examiner addressed the 112 6th paragraph issues and made a reasonable interpretation for the structure in the specification that the claims are referring to and applied art. The applicant cannot assert after a final rejection that applicant meant the entirety of p.6 line 4 - p.7 line 13 is considered in to be the claim as applicant attempts. Specific structure which applicant is referring to must be abundantly clear from applicant's specification to comply with 112 -second paragraph or else one of ordinary skill in the art would not be reasonably apprised of the scope of the claim. Therefore even if examiner was to accept applicant's arguments the examiner again would be forced to make 112 second rejections and the same art would apply because examiner's interpretation of the claim is still reasonable.